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[ORIGINAL CIVIL JURISDICTION]
HORNE, J.
July 29, 1937.

WEE HONG HENG
v.
THE MUNICIPAL COMMISSIONERS OF SINGAPORE.

Public Authorities Protection Ordinance (Cap. 14) S. 2—action of negligence—execution of act, duty or authority—limitation of time.

The defendants, who were under a statutory duty to construct, repair and maintain the streets, used a lorry of their own for the purpose of transporting sand and asphalt from the depot at Tanjong Pagar to Collyer Quay where maintenance work was in progress. The daily routine was for the driver of the lorry to pick up some coolies at Albert Street and then to proceed to Havelock Road for a general muster of coolies. At Havelock centre he collected coolies and brought them to Collyer Quay. After the final journey from Tanjong Pagar depot to Collyer Quay the driver was ordered to take the coolies to their quarters in Maude Road. On completion of that work he was free to return to the depot at Mackenzie Road. During the journey from Maude Road to Mackenzie Road on the 10th August 1936 the defendants' lorry collided with the plaintiff's motor cycle and injured the plaintiff.

On the 11th January 1937 the plaintiff issued a writ claiming damages for negligence arising out of the collision.

Held, that the Commissioners in transporting the labour force to their quarters in the town from the place of work or *vice versa* were performing an act which they were clearly not bound to do by an ordinance, and therefore that the action was not protected by section 2 (1) of the Public Authorities Protection Ordinance.

Bradford Corporation v. *Myers*, (1916) A.C. 242 applied.

TRIAL OF ACTION.

Fung for the plaintiff

Withers Payne for the defendants.

Cur. Ad. Vult.

HORNE, J.—This is an action for damages for negligence arising out of a collision between the Plaintiff's motor cycle and the Defendants' lorry.

On the 10th August last at about 2.50 the Plaintiff and his friend Peng Ah Leng were proceeding on a motor cycle from the Plaintiff's house in Selegie Road towards Serangoon Road. The Plaintiff's house is about 150 yards from the junction of Serangoon. Rochore Canal Road, Selegie Road and Bukit Timah Road. At the junction Police Constable 600 was on duty controlling the traffic. Every few minutes the Police Constable stops the traffic proceeding *via* Serangoon and Selegie Roads and allows it to proceed *via* Rochore Canal Road and Bukit Timah Road. At the time the Plaintiff was proceeding along Selegie Road. between Mackenzie Road and the junction, the lorry was stopped at Serangoon Road; and, as soon as traffic was allowed to proceed, its driver would be allowed to turn into Bukit Timah Road, provided there is no traffic proceeding from Selegie Road to Serangoon Road. As soon as the driver observed that he had the right to proceed, he began to move by setting his vehicle in motion and turning to the right towards Bukit Timah Road. The question arises whether in the circumstances he was negligent in so doing.

On the evidence led by the Plaintiff there was a primâ facie case of negligence. I can place no reliance upon the evidence of the Defendants' driver. He says "I had observed the cycle before": that was when he was stopped at end of Serangoon Road. The Police Constable 600, says he saw the motor cycle, about 40 yards away after he had turned to face Rochore Canal Road. Obviously it could not be a great distance away as it had only gone 150 yards from its starting point when the collision occurred. The lorry driver says he observed it 75 yards away coming at a great pace. Yet he attempts to turn to the right and move across its path when it had the right of way. His evidence as to there being a head on collision does not seem to me to be true. The Policeman was under the impression that the lorry would cross into Bukit Timah Road before the motor cycle could come to the junction. Yet at the same time, he says the motor cycle was travelling fast. I cannot find that there was excessive speed. The Plaintiff and his pillion passenger say that they were not going fast, but that the lorry crossed into Bukit Timah Road suddenly without any prior indication of doing so. Consequently the Plaintiff was compelled to swerve to his left but before he could get out of the way of the advancing lorry the motor cycle was struck and the Plaintiff was knocked unconscious. They also say that the motor cycle had reached the white line on their side when the lorry began its turn from a standstill to Bukit Timah Road. The Plaintiff and his friend impress me more favourably than the Defendants' driver. I think there is something more than a mere error of judgment on the part of the lorry driver. The collision was caused by the lorry driver deciding to set his vehicle in motion and turn to the right at the very moment the motor cycle reached the junction. There is no possible explanation as to why he attempted to turn if he had observed the cycle coming on. He must have imagined the motor cycle had already passed or he did not in fact observe it. I find as a fact that he did not keep a proper look out nor did he give any warning. I therefore hold that he acted negligently in attempting to cross the line of oncoming traffic without having assured himself that the way was clear.

The Plaintiff's motor cycle was on a hire purchase agreement. He was owing some $480 on it out of a value of $780 including insurance. The repairs were not paid for and the vendors took the bicycle; as there was some dispute as to whether the insurance covered the matter. It was open to the Plaintiff either to pay the instalments or let the cycle go. Had he chosen to retain it, he would be entitled to the cost of repairs and I do not see any reason to relieve the Defendants of that liability. The cost of the repairs is approximately the value of his interest in the motor cycle. The hospital expenses are admitted. The Plaintiff suffered a fracture of the nasal bone and endured considerable pain, and there is some temporary disfigurement and damage to facial nerves. It was two months before he returned from Penang during which he spent $100.

That is $121.55 plus $70 plus $100	$291.55
For the pain and suffering and the temporary disfigurement I allow	$400.00
Making in all	$691.55

and subject to the question whether the action will lie the costs of the suit.

The matter now to be considered is whether the action is barred by reason of the Public Authorities Protection Ordinance (Cap: 14). Section 2, subsections 1, 2 and 3 are as follows:—

(1) Where any action, prosecution or other proceeding is commenced against any person for any act done in pursuance or execution, or intended execution of any Ordinance or rules made thereunder, or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such Ordinance, rules, duty or authority the following subsections shall have effect.

(2) The action, prosecution or proceeding shall not lie or be instituted unless
  (a) one month's previous notice in writing of the intended action, and of the cause thereof, is given to the defendant; and
  (b) it is commenced within three months next after the act, neglect or default complained of, or in case of a continuance of injury or damage, within three months next after the ceasing thereof.

(3) In every action so brought it shall be expressly alleged that the defendant acted maliciously and without reasonable or probable cause; and if, at the trial, the plaintiff fails to prove such allegation, judgment shall be given for the defendant.

The writ was issued on 11th January, five months after the neglect complained of and the first question to be considered is whether the action falls within the description given in subsection 1.

The Defendants own lorry No. S.1969. Under the Municipal Ordinance they are under a public duty to construct repair and maintain the streets. They use the lorry generally for this purpose.

On 10th August last the lorry left the transport centre Mackenzie Road early in the morning. The normal procedure was for the driver to pick up some coolies at Albert Street and then proceed to Havelock Road for a general muster of coolies. At Havelock Road centre he collected coolies and brought them to Collyer Quay where maintenance work was in progress. During the course of the day the driver made several journeys between Collyer Quay and Tanjong Pagar Depot, bringing from that place on each journey a load of asphalt and sand. The asphalt is then sprayed on the road and covered with sand. After the final journey from Tanjong Pagar Depot to Collyer Quay the driver was ordered to take coolies to their lines in Maude Road. On completion of that work he would be free to return to the depot at Mackenzie Road. While *en route* from Maude Road to Mackenzie Road the accident occurred which has given rise to this action.

Dr.Withers-Payne has put forward an argument which I may express in these words. The Defendants are under a statutory duty to repair and maintain the streets. They keep lorries for this purpose. In pursuance of their duty they sent this lorry (a) to collect labour (b) to carry materials (c) to take the labourers to their quarters at the end of the day. In sending out the lorry they are acting in pursuance of their statutory duty and the fact that the accident happened when it was returning empty to the depot makes no difference. In support he refers to the case of *Edwards* v. *Metropolitan Water Board*, (1922) 1 K.B. 291 where it was held that no distinction could be drawn between an outward and a return journey: that it was all one journey and that it was undertaken in pursuance of the defendants' public duty.

In that case, as appears from the judgment of Lush, J. at p.294, the lorry when it caused the accident was not being used for carrying water-pipes but was returning from a depot to which it had first carried pipes. The pipes had been conveyed to this depot for maintaining a supply at the depot for maintainance and repair work. The learned Judge at p.295 then observes—"The defendants (the Metropolitan Water Board) here

could not have carried on their undertaking or performed their duty without carrying the pipes to the depot. The work was done directly in performance of their public duty." And the learned Judge held that the act in sending out the lorry "was done solely for the purpose of performing a statutory duty."

It was quite clear that the defendants were under the duty to supply water and the question was whether the protection afforded to them by the Act extended to the return journey of the lorry, that is to say, whether the return journey can be said to be in execution of their public duty. Younger, L. J. seems to think that the whole matter was one of internal management but Bankes and Scrutton L.JJ. both held that as the carrying of pipes was within the execution of the duty the return journey also must be.

The first sub-section is the same as the English Act 56 and 57 Vict. Cap. 61 and was under very careful review in *Bradford* v. *Myers*, (1916) A.C. 242. Lord Buckmaster, L.C. at p.247 said "the words of the section themselves limit the class of action and show that it was not intended to cover every act which a local authority had power to perform. In other words it is not because the act out of which an action arises is within their power that a public authority can enjoy the benefit of the statute. It is because the act is one which is either an act in the direct execution of a statute, or in the discharge of a public duty, or the exercise of a public authority. I regard these latter words as meaning a duty owed to all the public alike or an authority exercised impartially with regard to all the public. It assumes that there are authorities which are not public, and that in the exercise or discharge of such duties or authorities this protection does not apply."

Lord Shaw expresses the same view at p.262. He says "It is not enough that the neglect occurs in the doing of a thing which is authorized by statute, but the thing done is not every or any thing done but must be something in the execution of a public duty or authority, and it is only neglect in the execution of any *such* duty or authority that is covered by the statute. This restriction appears to me to be vital."

In both the speeches the stress is laid upon the public character of the authority or duty, and at p.264 Lord Shaw concludes by saying that "when a person suffers damage by the act of the local authority the question at once arises what was the kind of duty the corporation was engaged: was it a public duty or a duty owing to some individual and that exactly in the sense already explained? If the former, the Act applies; if the latter, it does not."

Having regard to these views expressed in such clear language, it does not appear to me that the act of transporting the coolies to their quarters is in the discharge of a public duty, or in the exercise of a public authority. It is certainly not in the direct execution of a statute or an Ordinance. No member of the public could complain if the coolies were not transported to and from their quarters. In *Edwards* v. *Metropolitan Water Board*, Scrutton L.J. takes a far wider view of the protection afforded by the English Act. Basing himself upon a number of decisions of the Court of Appeal prior to *Bradford Corporation* v. *Myers* he declares "that it is not essential that an act should be done in the discharge of a duty in order to bring the doers within the protection of the Act. It is enough if it is done in the exercise of a power or of an authority provided it is to be exercised for the public benefit."

Again at p.306 he says, "I cannot distinguish between carrying pipes for repairs and oil for pumping engine; or between carrying full drums of oil to a store and removing empty drums from a store. Each of these acts seems to be a direct execution of the respondents' duty because in my view the direct execution of the duty includes all incidental acts reasonably necessary for the execution of the duty."

But if the view expressed in *Edwards'* case by Scrutton, L.J. is to be adopted then a Court may be led to consider not only whether the act was done in the execution of the public duty, but also, whether it is incidental, and reasonably necessary, and for the public benefit; and that would result in an extension of the protection beyond what is justifiable under the words of the section. I prefer to base my decision upon the more limited view expressed by the House of Lords in *Bradford Corporation* v. *Myers*.

It is true that labour is as essential as material in the execution of the duty to make up and repair the streets. But whereas material must be transported, the labour need not be.

The Commissioners in transporting the labour force to their quarters in the town from the place of work or *vice versa* are performing an act which they are clearly not bound to do by an Ordinance. They are in contractual relationship with their labourers. It is purely within their discretion whether they provide free transport for them or not. But, if they do so, they cannot, in the absence of specific authority, creating a public obligation upon them, so to transport them, be in any better position than any private carrier.

I hold therefore that this action is not protected by section 2 (1) of the Public Authorities

Protection Ordinance (Cap: 14) as it is not in respect of a neglect....in the execution of a public duty or authority.

I am nevertheless constrained to point out the peculiar situation which arises under this Ordinance if an action is brought for an act done in the execution of the public duty or authority or in respect of neglect in the execution of such duty or authority. In such a case sub-section 1 and sub-section 3 must be read together, and the Plaintiff must allege that the defendant acted maliciously and without reasonable and probable cause and if he fails to prove the same the judgment must be given against him.

If the action is for an act done in the execution of a public duty, then the proof that the defendant acted maliciously and without reasonable and probable cause must inevitably prove that the act was not done in execution or even intended execution of a public duty. *Newell* v. *Starkie* 89 L.J., P.C. 1, referred to in *Scammell* v. *Hurley*, (1929) 2.K.B. 419. If the action is for a neglect in the execution of a public duty, it is impossible even to prove that the omission was done maliciously and without reasonable and probable cause As this standard of proof is in such an action unattainable the action cannot be brought at all. If one accepts neglect as meaning an act of negligence how can a plaintiff prove that the act of negligence was performed maliciously and without reasonable and probable cause. He is quite ready to prove "a violation of a legal right in particular circumstances." But he is to go further and prove that in failing to take care the defendant acted maliciously and without reasonable and probable cause. Negligence is the failure to exercise proper care in doing an act one is lawfully entitled to do. Acting maliciously in the legal sense is acting wrongfully, intentionally, and without lawful justification and excuse. None the less the plaintiff has to prove that the defendant, in doing an act he is lawfully entitled to do, did it without lawful justification, that is that he had no legal right to do the act at all.

Even taking maliciously in the limited sense it is used in the action for malicious prosecution, as spite or indirect and improper motives, it is impossible to prove that a driver who is a perfect stranger to you acted maliciously in driving his lorry into your vehicle.

The result is that a public body is, by this Ordinance, in cases falling within sub-section one, made a judge in its own cause. If it thinks fit to pay damages, it may; if it thinks not, it need not. There is no legal compulsion to pay, and no appeal against a refusal. Public opinion or the sympathy of individual members of the public body may have some effect upon the matter; and, presumably, a public body, if satisfied that the claim is a just one, would make an *ex gratia* payment; but, as such bodies are custodians of public funds, and, as it is not easy for any employer to judge whether his servant has been negligent or not, the public body is thus placed in an invidious and an anomalous position. I say, anomalous, because it appears that a statutory entity such as a public authority created by Ordinance has a greater protection than has the Colonial Government itself. [*Att: Gen: of S.S.* v. *Pang Ah Yew*, (1925) A.C. 55.]

Such is not the case under the English Act. The protection there given is reasonable.

It is difficult to understand how sub-section 3 got into this Ordinance at all and is in my opinion an unnecessary section.

Judgment accordingly.

Solicitor for the plaintiff—*S. Fung.*

Solicitors for the defendant—

Drew & Napier.

[ORIGINAL CIVIL JURISDICTION]

TERRELL, AG. C.J.

August 12, 1937

THAM SEOW HING (M.W.) v. CHOP KWONG FATT CHEONG.

[SINGAPORE SUIT No. 128 of 1937]

Principal and agent—trading firm—local branch, a purchasing and forwarding agency—manager accepting deposits—absence of authority—deposit receipts — chop or seal — ostensible authority—absence of benefit to firm.

The manager of the Singapore branch of a firm in Kuala Lumpur accepted two deposits from the plaintiff and in exchange gave her two receipts chopped with the seal of the firm. The manager's duties were to make purchases from traders in Singapore and forward the goods to Kuala Lumpur, to arrange for the dispatch to Kuala Lumpur of goods purchased from China, and send up-country goods which the head-office had sold in other centres. Three times a month the head office remitted moneys by means of drafts to the agent to enable him to pay for the goods purchased in Singapore and such drafts were paid into an account at a local bank upon which the agent was authorised to draw. It was in evidence that the agent had no authority to borrow on behalf of the firm and that the firm at all material times was never in financial difficulties. The books of the firm contained no record of any loans or of the deposits said to have been made by the plaintiff. In an action to recover the amounts deposited:—

Held that the mere possession of the seal did not extend the agent's actual, implied or ostensible authority to borrow money, when such borrowing was not necessary for the firm's business.

A. T. K. P. L. Palaniappa Chettiar v. *Chop Nam Kee*, (1913) S.S.L.R. 6 applied.

Held further that inasmuch as it was not established that the firm had benefited by the agent's borrowings, the plaintiff was not entitled to recover.

TRIAL OF ACTION.

The facts and arguments appear sufficiently from the judgment below.

Chong Thutt Pitt for the plaintiff.

Mallal for the defendants.

Cur. Ad. Vult.